IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1571 of 2005
In
SPECIAL CIVIL APPLICATION No. 22148 of 2005
With
LETTERS PATENT APPEAL No. 1572 of 2005
In
SPECIAL CIVIL APPLICATION No. 22150 of 2005
With
LETTERS PATENT APPEAL No. 1568 of 2005
In
SPECIAL CIVIL APPLICATION No. 22151 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN KANTILAL PATEL P.T.C. COLLEGE - Appellant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Appellant(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
None for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/11/2005
COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These appeals are a classic example indicating how failure / inability of the system to provide for a mechanism to resolve differences between two public authorities over an issue of vital public importance (and reluctance on part of the Courts in playing the role of a catalyst by timely and positive judicial intervention at a critical juncture) can result not only into avoidable multiplicity of litigation but also criminal waste of precious national resources. The wastage of manpower and infrastructure, if allowed, would have further delayed achievement of the goal embodied in Article 21A and 45 of the Constitution for providing free and compulsory education to all the children in the age group of 6 to 14 years.

2. These three appeals arise from the common order dated 14.11.2005 passed by the learned Single Judge dismissing the petitions of the appellant institutions and thereby rejecting the prayer of the institutions to direct the State Government and the Director of Primary Education to allot the students for admission to PTC Course for the year 2005 – 2006.

F A C T S

3. The appellant institutions in the first two appeals have already been running B.Ed. Colleges. The appellant in Letters Patent Appeal No.1571 of 2005 (Smt.Shardaben Kantilal Patel PTC College) is running a college imparting instructions in B.Ed. (Bachelor of

Education) Course for last 35 years and the other appellant is also running a college imparting instructions in B.Ed. Course for the last two years. It is also undisputed that both the institutions have recognition from the Western India Regional Committee of the National Council for Teachers Education (the NCTE for brevity) for running B.Ed. Colleges. The controversy in the present appeals is not about the recognition or provisional recognition granted to the appellants by the NCTE on 26.9.2005 for running PTC Colleges for the academic year 2005-06, but about refusal to make allotment of students by the Director of Primary Education of the State Government for the last three months on the ground that according to the State Government authorities, the State does not need any more PTC Colleges which view is not acceptable to the NCTE.

4. The appellant institutions had applied for recognition for opening the new PTC College in December, 2004 for the academic year 2005 – 2006 onwards. The institutions, which are recognized by the NCTE for B.Ed. Colleges, are not required to obtain NOC from the State Government for establishing a new PTC College vide NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 (hereinafter referred to as “the Regulations”). Particularly as per sub-clause (iv) of Regulation 6 of the said Regulations as amended in 2003, requirement of NOC shall not apply to an institution which is already recognized by the NCTE for running a B.Ed. College. It appears that the NCTE inspection team

inspected the appellant institutions in July, 2005, but the decision to grant recognition was taken at the meeting held on 24.9.2005. Dr Nalin Pandit, representative of the Gujarat Council of Educational Research and Training (GCERT) a Government of Gujarat organization, was also present at the said meeting in his capacity as a member of the Western India Regional Committee of NCTE. By their separate communications addressed to the Director of Primary Education, Gujarat State, dated 26.9.2005, the NCTE granted recognition of Elementary level Teacher Training Institution (popularly known in the State of Gujarat as Primary Teacher's Certificate (PTC) College) to the appellants in the following terms:-

> "Please find the following institution recognized by Western Regional Committee (NCTE) in its CONTINUED 77th meeting held on September, 24-25, 2005 with the new unit of 50 students for the PTC Course for the academic session 2005-2006, subject to the condition that the college will submit the list of staff/ faculty duly approved by the Director, SCERT/ competent authority before commencement of the academic session and before starting the course the institution should seek prior permission of the competent authority for conducting the exam and approval of the curriculum that they are going to adopt for the course. Institution if starts the training programme without prior approval/ permission of competent authority/examining body regarding the curriculum they have adopted and conduct of examination for award of Diploma/ Certificate the recognition of such institution shall stand withdrawn.

The formal order of recognition will be issued only after the receipt of this list in NRC, NCTE, Bhopal. You are requested to allow all the institutions to admit

students only upto the approved intake for which recognition has been granted.

APP.No.	NCTE Code	Name and Address of The Institution	Course	Approved Unit of	Academic Session
APR 14 89	32219	Smt.Shardaben PTC Kantilal Patel PTC College, At Post Darmali, Taluka Idar, Darmali, S.E. Gujarat.		50	2005-06

Also, instruct the institution to adhere to the norms prescribed by the NCTE referring to eligibility criteria for admission; infrastructure; staff and curriculum transaction; etc to the standards laid down by the NCTE and continuous maintenance of these norms and standards is mandatory and binding on the institution.

Yours faithfully,
Sd/- Regional Director.

Copy to :

1. The Member Secretary, National Council for Teacher Education, New Delhi-110 002.

2. The Director, Gujarat State, Council of Educational Research & Training, Sector-12, Vidya Bhavan, Gandhinagar.

3. The Principal, Smt.Shardaben Kantilal Patel PTC College, at Post Darmali, Taluka Idar, Darmali, Sabarkantha, Gujarat. The institution is directed that the list of faculty member are sent to this office duly signed by the Director, Primary Education, Government of Gujarat, Gandhinagar within one month. The formal order of recognition will be issued only after the receipt of this list in WRC, NCTE, Bhopal."

Similar communications dated 26.9.2005 were sent in

case of the other two institutions also.

In view of the above communications, a copy whereof was also sent to the appellant institutions, the appellant institutions approached the Director of Primary Education on 29.9.2005 with the list of faculty members. According to the third institution (Letters Patent Appeal No.1568 of 2005) such a list was also sent by it earlier to the Director of Primary Education on 12.9.2005.

5. As per the policy for granting admissions to the Self-financed PTC Colleges in the State of Gujarat, there is a system of Centralized Admissions and candidates desirous of seeking admission to various Self-financed PTC Colleges in the State apply to the Government appointed Centralized Admission Committee which prepares the common merit list of eligible students for allotment of students to various Self-financed PTC Colleges on the basis of marks obtained at the H.Sc. examination. Accordingly, the appellants requested the Director of Primary Education on 29.9.2005 to allot students to the appellant institutions for PTC Course for which recognition was issued in their favour in the aforesaid terms. There is no dispute about the fact that other institutions which are granted recognition by the NCTE in similar terms are allotted students before the formal order of recognition is issued by the NCTE which process takes considerable time and very often such formal order of recognition is issued by the NCTE at the end of the academic year, inter alia, because the Director of Primary Education of the State also takes a few months before sending the report to the NCTE. Though the request of the appellants for account of students were

formally turned down by the Director of Primary Education on 7.11.2005, all along the Director was opposed to grant of recognition to new PTC colleges/permission to open additional classes in examining PTC colleges.

GENESIS OF CONTROVERSY

6. The State authorities did not make any allotment of students to the institutions granted recognition by NCTE in August/September 2005 and that stand was sought to be justified on the ground that the State Government had informed the NCTE as far as back on 8.2.2005 that looking to the number of PTC Colleges in the State, no new PTC Colleges are required in the State, and, therefore, the NCTE may not grant recognition to any such institution.

6.1 Letter dated 8.2.2005 of the Director of Primary Education to the Regional Director, NCTE, Bhopal was in the following terms:-

> "To,
> The Regional Director,
> National Council for Teacher Education,
> Manas Bhavan, Shyamala Hills,
> Bhopal.
>
> Sub : Recognition of New PTC Colleges and sanction of additional division
>
> Sir,
>
> Reference to the subject noted above, I am to state that at present there are 226 PTC colleges running in the State and more than 12,000 trained candidates are available from these colleges. Yearly need of trained teachers in the primary schools of the State is about 6,000. Against the need of 6,000 trained candidates, 12,000 trained

candidate are available, hence no new college or additional division in the present colleges is required in the State at present.

It is, therefore, requested not to consider any new college for recognition or sanction additional division to the present colleges.

No students/candidates will be allotted to the new colleges sanctioned or additional division granted in the present colleges hereafter.

Yours faithfully,
Sd/-
(R.C. Raval)
Director of Primary Education,
Gujarat State, Gandhinagar.

Copy submitted to :
The Principal Secretary to the Govt. of
Gujarat, Education Department,
Sachivalaya, Gandhinagar for information.

The Director, GCERT Sector No. 12, Gandhinagar."

6.2 Accordingly, on 3.3.2005 the Director of Primary Education also informed some of the institutions applying for NOC for opening PTC colleges that at present the State has enough number of colleges to train 12000 PTC Teachers per year, but requirement of teachers in primary schools is only 4000 to 5000 per year, and, therefore, the State Government has decided not to give permission to start the new PTC College or to grant permission to open additional class and that in view of this policy decision, it was not necessary to consider the applications for NOC. It was further stated that as and when there will be need for opening the new PTC Colleges in future, an advertisement will be issued for that purpose and then only, the institutions may apply for such NOC.

A copy of this letter was also sent to the Principal Secretary, Education Department in continuation of previous correspondence between the State Government and the Director of Primary Education.

6.3 Apprehending that in view of such stand of the State Government the NCTE will reject their applications for recognition, many institutions which had applied for recognition by December 2004, filed petitions before a learned Single Judge of this Court, which came to be allowed by judgment dated 16.3.2005 to the effect that grant and/or refusal of NOC by the State Government is not conclusive or binding and views express by the State Government while rejecting the application of the respective petitioners for NOC and/or while not granting NOC will be considered by the Regional Committee while taking decision on the applications for recognition submitted by the respective petitioners.

7. However, inspite of the aforesaid decision of this Court, even after the NCTE granted the orders of recognition (treated by the authority as an order of provisional recognition) in August/September 2005, the State Government and the Director of Primary Education did not allot students to any of the seven PTC Colleges which were either new PTC Colleges or existing PTC Colleges granted permission to open additional classes. One such institution called “Santokba Ishwarlal Charitable Trust was granted recognition in the similar terms (as quoted in para 4 hereinabove) by the NCTE in August 2005, but was not being allotted students, and, therefore, it preferred Special Civil Application No.18384 of 2005 wherein by order dated 21.9.2005, a

learned Single Judge granted interim relief directing the State authorities to allot students to that institution. The learned Single Judge followed the decision of the Apex Court in St.Johns Teachers Training Institute Vs. Regional Director, NCTE, reported in AIR 2003 SC 1533 for holding that the NCTE has to consider the views of the State Government as expressed through the NOC, but the views of the State Government are not binding on the NCTE which is specifically constituted to grant recognition to the institutions offering teachers' training course.

Since that order was not being complied with, that institution filed a contempt petition and thereupon the State Government filed Letters Patent Appeal No.1407 of 2005 However, no stay was granted in the said appeal. Hence, on 27.10.2005, the Court taking up contempt matters directed the State authorities to comply with the order of the learned Single Judge, subject to the result of the LPA. Ultimately, when that Letters Patent Appeal was placed for hearing before us on 15.11.2005, the appeal came to be dismissed, as, no affidavit-in-reply was filed by the authority before the learned Single Judge and this Court over-ruled the objection of the State Government that in absence of NOC issued by the State Government, the State Government was justified in not allotting the students to the institution. Students have been recently allotted to that institution on 18th November.

8. In the meantime, after receipt of the order dated 26.9.2005 from the NCTE regarding recognition of their PTC Colleges, when the three appellant institutions herein approached the Director of Primary Education on

29.9.2005, they were informed that since the State Government had not acquiesced into the order dated 21.9.2005 of the learned Single Judge in the case of Santokba Ishwarlal Charitable Trust (SCA No. 18384 of 2004) and the order was being carried in appeal, the appellants should wait till the out-come of the proceedings in the case of Santokba Ishwarlal Charitable Trust. A specific averment to that effect is made in paras 3.4 to 3.6 of the memo of the petitions giving rise to Letters Patent Appeal Nos.1571 and 1572 of 2005. The appellants further stated in the memo of the petition in para 3.5 that since no stay was granted in Letters Patent Appeal filed by the State Government and the Director of Primary Education in the case of Santokba Ishwarlal Charitable Trust, the respondent authorities were going to allot students to the said institution on or about 18.11.2005. These averments are not controverted but the Director of Primary Education by his letter dated 7.11.2005 informed the appellant institutions that the institutions were granted recognition by the NCTE for imparting training in PTC Course for the current year as per the NCTE letter dated 26.9.2005, but students cannot be allotted to the appellant institutions for the following reasons.:-

(i) The admission process for PTC Course was closed on 20.9.2005 and the NCTE was also informed accordingly vide letter dated 23.9.2005;

(ii) The first term of the academic year 2005–2006 has already been over and the second term was due to commence, and, therefore, if the admissions are granted, the trainees will not be

able to complete the term for the academic and practical training as per the norms. The appellants were, therefore, informed that the appellants will be alloted the students from the academic year 2006-2007.

9. The aforesaid communications dated 7.1.2005 came to be challenged by the appellants before the learned Single Judge who dismissed the petitions on the ground that if the State authorities are now directed to allot students, the appellant institutions will not be able to complete 180 days of study and on that ground alone, the petitions came to be dismissed. As regards reliance placed by the appellants on the order passed by the learned Single Judge of this Court in the case of Smt. Santokba Ishwarlal Charitable Trust, the learned Single Judge referred to the stand of the State authorities that the authorities were bound to implement the directions of this Court, but similar directions were not required to be issued in case of the appellant institutions. Hence, the present appeals against the aforesaid common order dated 14.11.2005 of the learned Single Judge.

10. Since the recognition is granted by the NCTE to all the three appellants herein for the academic year 2005-06, this Court thought it proper to direct the joinder of Regional Director, NCTE, Bhopal in the present proceedings.

In response to the notice issued by this Court to the Regional Director, NCTE at Bhopal, Mr.P.K.Jani, learned counsel has appeared and in response to the specific query of the Court vis-a-vis the stand of the

State authority, Mr.Jani has stated that more PTC colleges are required in the State. Under instructions, Mr.Jani has stated that in the 11th Five Year Plan, about one million teachers are required, and, therefore, the NCTE do not agree with the assessment of the State Government that no more PTC colleges are required in the State of Gujarat, and, therefore, recognition was granted to four colleges and permission to start the additional classes was also granted to three existing PTC Colleges; One such recognition was granted in August 2005 and other six institutions were granted such recognition in September, 2005, but the formal order of recognition is to be issued only after receiving the confirmation from the Director of Primary Education about compliance with the norms. The learned counsel is, however, not in a position to controvert the case of the appellants that in all other cases, NCTE issues such letters granting provisional recognition in similar terms (as quoted in para 4 hereinabove) and that immediately thereafter students are being allotted every year as soon as such communications are addressed to the Director of Primary Education and formal orders of recognition are issued subsequently after a few months and almost at the end of the academic year.

11. In view of the above factual back-drop, it is clear that the State authorities are not in a position to point out any short-coming or deficiency on the part of the appellant institutions to justify non-allotment of students to the PTC Colleges of the appellant institutions, except the delay which is attributable only to the authorities.

The learned counsel for the two appellants (LPA Nos. 1571 and 1572) states that faculty members were selected by the institutions through the Selection Committee of which a representative of the Director of Primary Education was a member and the selection was made with the approval of the said member and immediately, thereafter the appellants had sent respective lists of faculty members to the Director of Primary Education in December 2004 itself and again forwarded the lists of faculty members to the NCTE earlier on 5.8.2005 and again on 12.9.2005. Copies of the said communications dated 5.8.2005 and 12.9.2005 are produced in the present proceedings along with further affidavit filed on behalf of the appellants. But all along in the first round of petitions, resistance of the State authority was only on the ground that according to the State Government, no new PTC Colleges were required in the State. Thereafter in the second round of petitions, the State Government had been contending that the admissions to PTC colleges were closed on 20.9.2005 and the NCTE was informed accordingly by letter dated 23.9.2005. It is not, however, the case of the State authorities that any such cut off date was communicated by the State authorities to the NCTE in advance.

12. In view of the above, it is clear that the State authorities themselves have delayed allotting students to the appellant institutions even after the appellant institutions were granted provisional recognition by the NCTE on 26.9.2005. Having themselves taken two months time for no fault of the appellants, the State authorities are now refusing to allot the students to the appellants only on the ground that the students to be

admitted will not be able to complete the full term of 180 days.

Apropos the above objection, the learned counsel for the appellants have pointed out that in the months of October and November 2005, there was Diwali vacation for 21 days and prior to the said vacation also, there were many public holidays, and, therefore, much time has not been lost. It is submitted that in 2004 the examinations were conducted in August. The PTC is a two year course with 180 days in each year, unlike B.Ed which is one year course with 219 days teaching. There will be sufficient time for completion of the terms. It is submitted that the students are required to complete minimum 80% of the term, and, therefore also there will be no difficulty for the students to complete the terms. It is submitted that the aforesaid aspect is also required to be seen in the back-ground of the fact that the State authorities are solely responsible for delay in not allotting the students for the last two months. Our attention is also invited to the fact that the State authorities in the Education Department have allotted students to another PTC college on 18th of this month and have also called candidates for admission to C.P.Ed. Colleges on 28th and 29th of this month.

13. It clearly transpires that the appellant institutions were not at fault for non-allotment of students by the Director of Primary Education for last two months and the appellants have kept their infrastructure ready for the last eleven months and are required to pay salary to their faculty members. The State Government authorities are not going to give the

appellants salary grant for the faculty members for the current academic year and in further also the appellants are going to be self-financed institutions. More over, considering the fact that the PTC is a two year course with 180 days training in each year, unlike the one year B.Ed Course with 219 days teaching in a year and that in the past the PTC Examination had also been held in the month of August, 2004, it appears to the Court that subject to appropriate directions being issued and suggestions being made to both the authorities, i.e., NCTE and the State Government authorities for better co-ordination to avoid any such delay in future, it would be just and proper to direct that the Director of Primary Education shall allot students for admission to the three appellant - PTC Colleges in whose favour provisional recognition was granted by the NCTE in September 2005, subject to their adhering to the NCTE norms throughout the currency of the course and subject to other appropriate terms and conditions. Ms Mamta Vyas and Mr NK Majmudar for the appellants have stated that the appellants will abide by all conditions including the condition that all seats will be filled in from students allotted by the Director of Primary Education.

NEED FOR DIALOGUE BETWEEN STATE AND NCTE

14.1 Even while granting reliefs through appellant-institutions to the candidates aspiring for admission to PTC colleges, it is with a lot of trepidation that we have adopted this course. We find that the unfortunate situation giving rise to this situation has been created only on account of the disagreement between the educational authorities in the State of Gujarat and the

NCTE, Bhopal in the matter of assessment of the need for having or not having more PTC colleges in the State of Gujarat.

14.2 The National Council for Teacher Education Act, 1993 has been enacted by Parliament to provide for the establishment of a National Council with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. The Act provides for recognition of institutions offering course or training in teacher education by the Regional Committee of the National Council for Teacher Education as contained in Chapter IV of the said Act. Sub-section (3) of Section 14 casts a duty upon the Regional Committee to be satisfied of a large number of matters before passing the order granting recognition to an institution which has moved an application for the said purpose. The factors mentioned in sub-section (3) are that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that if fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be laid down in the regulations.

14.3 For the entire western region consisting of Rajasthan, Gujarat, Madhya Pradesh, Maharashtra and Goa, there is only one Regional Committee at Bhopal which has to deal with applications for grant of recognition from these States.

The Apex Court has, therefore, highlighted the need for proper coordination between the Regional Committee of the NCTE and the concerned State Government in St. Johns Teachers Training Institute vs. Regional Director, NCTE, AIR 2003 SC 1533 = (2003) 3 SCC 321, inter-alia, in the following terms:-

> "14..... It is, therefore, obvious that it will not only be difficult but almost impossible for the Regional Committee to itself obtain complete particulars and details of financial resources, accommodation, library, qualified staff, laboratory and other conditions of the institution which has moved an application for grant of recognition. The institution may be located in the interior of the district in a far away State. The Regional Committee cannot perform such herculean task and it has to necessarily depend upon some other agency or body for obtaining necessary information. It is for this reason that the assistance of the State Government or Union Territory in which that institution is located is taken by the Regional Committee and this is achieved by making a provision in Regulations 5(e) and (f) that application made by institution for grant of recognition has to be accompanied with a NOC from the concerned State or Union Territory. The impugned Regulations in fact facilitate the job of the Regional Committees in discharging their responsibilities."
>
> (emphasis supplied)

After quoting the guidelines dated 2.2.1996 for issuance of NOC by State Government in para 15 of the judgment in the above case, the Apex Court has summarized the guidelines in the following terms:-

> "16. A perusal of the guidelines would show that while considering an application for grant of a NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on

> preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media, etc. and also for speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards.
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> (emphasis supplied)

Since the Apex Court was confronted with the contention that there may be cases of direct conflict between the views of the State Government and those of the NCTE, the Apex Court has laid down the law in the following terms:-

> 18. Regulation 6 (ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the concerned State Government or Union Territory and the same is refused, the entire matter will be examined by the Regional

> Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of a NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new regulations the challenge raised to the validity of Regulations 5 (e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under sub-section (3) of Section 14 of the Act. Therefore no exception can be taken to such a course of action.
>
> (emphasis supplied)

14.4 The Court then dealt with the question about the delay on the part of the Governments in issuing NOC and observed that the State Government must take a decision on the application moved by an institution for grant of an NOC within a reasonable time and while suggesting that the Council should frame appropriate regulations fixing the time limit for this purpose, the Apex Court observed that till regulations are made by the Council, the decision should be taken by the State Government within four months, failing which it shall be deemed that the NOC has been granted.

15. The above decision of the Apex Court has been followed in the following decisions of three learned Judges of this Court.

15.1 In the decision dated 16.3.2005 in Special Civil Application No. 9251 of 2004 a learned Single Judge of this Court was apprised of the stand of the State Government that it was refusing applications for NOCs

because the existing B.Ed/PTC colleges from which 11,000 trained teachers pass out are more than sufficient looking to the requirement of only 4000 to 5000 teachers. The learned Single Judge, however, did not elicit views of the NCTE on this vital aspect nor did he make any attempt to pre-empt any possible conflict between the views of the State Government and the NCTE, but after examining the relevant provisions of the Act of 1993, the Regulations of 2002 and the guidelines dated 2.2.1996 for State NOCs after perusing the decision of the Apex Court in St. Johns Teacher Training Institute (Supra) the learned Single Judge reproduced the principles laid down by the Apex Court to the effect that grant and/or refusal of NOC by the State Government is not conclusive or binding and views expressed by the State Government while rejecting the application of the respective petitioners for NOC and/or while not granting NOC will be considered by the Regional Committee while taking decision on the applications for recognition submitted by the respective petitioners. The same learned Single Judge while hearing the petitions giving rise to these appeals, did not consider that for the last three months the State authorities have been acting contrary to the law laid down in the aforesaid judgment dated 16.3.2005.

15.2 Another learned Single Judge of this Court took the same view in the judgment dated 21.9.2005 in Special Civil Application No.18384 of 2004 as already indicated in para 7 of this judgment.

15.3 In the judgment dated 16.8.2005 in SCA No. 15598 of 2005, a learned Single Judge held that an institution granted recognition by the NCTE cannot be refused

affiliation on the ground that it did not have NOC of the State Government. Recognition granted by the NCTE under Section 14 of the Act of 1993 cannot be taken away by the State by refusing or withdrawing NOC.

15.4 In the judgment dated 20.7.2005 in Special Civil Application No.12168 of 2005 (Suvidha Education Trust) the same learned Single Judge dealt with a case where the Director of Primary Education refused to allot students on account of certain irregularities. The learned Single Judge held that the Director of Primary Education has "no power, jurisdiction and authority to withdraw the recognition. The direct consequence of the impugned order i.e. not to give admissions in the PTC college run by the petitioner-trust tantamounts to withdrawal of recognition or suspension of recognition, but as stated hereinabove, the said powers are vested under Section 17 of the Act of 1993 with the NCTE".

16. The reason for making a detailed reference to the decision of the Apex Court in St. Johns Teachers Training Institute vs. Regional Director, NCTE (supra) and the three decisions of the learned Single Judges of this Court is to highlight that while one part of the Apex Court decision has been appreciated, (the grant or refusal of an NOC by the State Government is not conclusive or binding on the Regional Committee of the NCTE), the importance of the role to be played by the State Government in the matter of assessment of the need and in other relevant matters is not fully appreciated in all the quarters inspite of the fact that the guidelines dated 2.2.1996 framed by the NCTE itself envisage important role to be played by the State Government.

Those guidelines hold the field even now, though they are to be read within the confines of Regulation 6 of the Regulations of 2002. The view of the State Government as indicated in the letter dated 8.2.2005 of the Director of Primary Education addressed to the Regional Director, NCTE, Bhopal that at present the State has enough number of colleges to train 12000 PTC teachers per year that the the requirement of teachers in primary school is only 6000 per year does deserve consideration by the Regional Committee of the NCTE and so also the view of the NCTE that about a million primary teachers are required in the country in the Eleventh Five Year Plan also deserves full consideration by the State Government and the Director of Primary Education. The appellants also submit that the assessment of the State Government is only for primary teachers required by panchayat and municipal schools and not for private primary schools. The question whether there would be enough competent and qualified persons to be appointed as teachers in PTC/B.Ed. College is also not insignificant. The principle enunciated in para 18 of the judgment in St. John's case (supra) was laid down to deal with a case of direct conflict, but that does not mean that it is normal for two public authorities to remain in a state of perpetual conflict by having diametrically opposite views on a matter of such vital public importance.

It, therefore, appears to the Court that it is imperative for the Regional Committee of NCTE, Bhopal as well as the State Government and the Director of Primary Education to have a meaningful dialogue on assessment of the need and other relevant requirements for planned and coordinated development of the teacher education system

in the State. Absence of such meaningful dialogue in the recent past has resulted into the unfortunate situation not merely generating litigations noted in this judgment but also avoidable delay in commencement of the PTC course for at least 200 students aspiring to seek admissions to PTC colleges and waiting in the long queue of about 40,000 such young candidates.

17. In view of the aforesaid decisions and in light of the above discussion, it will be in the fitness of things if both the State Government, (including the Director of Primary Education) and the NCTE have a meaningful dialogue for assessing the need or otherwise for having more PTC colleges in the State of Gujarat, locations where such colleges are needed and the subjects and specialities for which such colleges need to be established or expanded; and to conclude such dialogue well before the last date of receiving applications for recognition which are to be submitted by the institutions proposing to establish new PTC colleges.

18. S C H E D U L E

18.1 The State authorities have also submitted that the Regional Committee of NCTE Bhopal grants such recognition for opening new PTC colleges or permission for opening additional classes in the existing PTC colleges in the months of August, September or even October for the current academic year, even though the applications were made by the concerned institutions way back in December of the previous calendar year.

18.2 Considering the number of applications being

received by the Regional Committee, NCTE and the detailed scrutiny of such applications required to be made both on the basis of documents and by on site inspection, it is certainly performing a herculean task, as noticed by the Apex Court. Nevertheless, it cannot be gainsaid that the Council or its Regional Committee must lay down a time frame for deciding such applications and for commencement and completion of admissions to such colleges and also for commencement of courses. The need for such regulations stipulating such time frame was recognised by the Apex Court in the matter of grant of admissions to medical colleges vide the decision in Madhu Singh's case (2002) 7 SCC 258 which prompted the Central Government and the Medical Council of India to lay down the schedule for various stages of the admission process and commencement of classes, and these time schedules are to be found in the recent judgment of the Apex Court in Mridul Dhar vs. Union of India, (2005) 2 SCC 65 (para 15). It is, therefore, high time that the National Council for Teacher Education or its Regional Committee at Bhopal in consultation with the concerned State Governments prepare such a time schedule and avoid any further non-utilization of time, resources and energy of all concerned.

18.3 Till such time schedule is fixed by any statutory regulations, the Court proposes to indicate the time schedule which shall be observed both by the Regional Committee, NCTE, Bhopal and the State Education authorities and all the institutions getting provisional recognition/ recognition from the Western Regional committee, NCTE. Of course, this time schedule is in the nature of a guideline and it will be open to the Regional

Committee, NCTE and the State Government to make appropriate modifications thereto by consensus, but this Court would like to impress upon all concerned that until appropriate statutory regulations are framed in this behalf or modifications are made thereto by the NCTE/ its Regional Committee and the State Government by consensus, this Court will henceforth require the authorities to abide by the said time schedule so that both the Western Regional Committee, NCTE as well as the educational authorities at least in the State of Gujarat take timely action at all the relevant stages and do not contribute to any delay which would keep the institutions as well as the aspirant student - candidates under suspense only causing avoidable anxiety and uncertainty.

18.4 The dialogue between the State authorities and the NCTE for assessing need for number of trained primary teachers required in each academic year shall be concluded on or before 31st October of the year prior to the commencement of the relevant academic year and the NCTE shall take decision on applications for recognition by 31st July of the relevant academic year (and in no case later than 15th August). The first round of counselling for the admission process shall be completed not later than 31st August of the relevant academic year and the last round of counselling for admissions shall be concluded by 30th September of the relevant academic year. This shall be treated as the time schedule operative from the next academic year (2006-07) subject to any changes which may be made by the NCTE and the State Government authorities. For the academic year 2006-07, the assessment of the need for primary teachers required in the State shall be made by 31st December, 2005.

19. It is further clarified that the the role to be played by the Director of Primary Education, in ensuring that the NCTE norms are properly observed by the appellant institutions and other PTC colleges, is not to be treated as undermined by any of the observations made or directions given in this judgment.

O R D E R

20. The appeals are allowed in the following terms:-

I. The Director of Primary Education shall allot the students to the PTC Colleges of the appellant institutions for the academic year 2005 – 2006 subject to the following terms and conditions and clarifications :-

(i) The appellant institutions shall adhere to NCTE norms as mentioned in the NCTE letter dated 26.9.2005 addressed to the Director of Primary Education and copies endorsed to the appellants and the Director of Primary education shall get the necessary verification made within one week from today.

(ii) This order shall not be construed as dispensing with fulfillment of norms of the Examining Body regarding completion of terms and attendance for eligibility to appear at the examinations.

(iii) All the seats in the appellant

institutions shall be filled in from the merit lists prepared by the State Government authorities and no seat shall be treated as a management seat.

(iv) The allotment shall be made within ten days from today strictly on the basis of merit lists prepared by the Director of Primary Education for the respective categories, but those who have already secured admission in other PTC colleges (whether in Government quota or in management quota) shall not be considered for admissions to the appellant PTC colleges. There will be no reshuffling.

(v) The Director of Primary Education shall issue advertisements in all five leading Gujarati newspapers in the State – being Gujarat Samachar, Sandesh, Divya Bhaskar, Fulchhab and Jansatta-Loksatta (all Gujarat editions) calling students from a particular Sr. No. to a particular Sr. No. in the respective categories to remain present for the interviews with necessary documents.

(vi) The expenses for the newspaper advertisements shall be deposited by the appellant institutions with the Director of Primary Education and to start with, each appellant institution shall deposit Rs.25,000/- latest by 3rd December, 2005.

(vii) The appellants shall not charge from the students any amount in excess of the amounts of tuition fees, hostel fees and any other fees/expenses determined by the State Government and/or the Director of Primary Education. The accounts relating to all the amounts received by the appellants including food bill amounts shall be submitted to the Director of Primary Education or any other authority nominated by him.

(viii) Looking to the number of days which have elapsed, the students shall be required to pay only proportionate amount of tuition fees and hostel fees for the month of December till the examination is held. In other words, no fees and other expenses shall be charged for the period upto November, 2005.

(ix) The appellants shall pay salaries and allowances to the members of their teaching as well non-teaching staff only by A/c. Payee cheques or by depositing the amounts in their bank accounts.

(x) If any person has any complaint or grievance regarding fees or any other facilities, it will be open to such person to make a complaint to the Director of Primary education and/or to the NCTE at

Bhopal.

(xi) The Managing Trustee of each appellant institution shall file an undertaking before this Court by 3rd December 2005 to comply with all the above terms and conditions.

II. Apart from the aforesaid directions being granted in the facts of the present case, the Court cannot help observing that the State Government and the Director of Primary education on one hand and the Regional Committee, NCTE, Bhopal on the other hand, shall make endeavour to make assessment of the need for trained primary teachers in the State of Gujarat for future academic years and the NCTE shall accordingly consider the applicants for recognition for opening the new PTC colleges or permission to open additional classes in the existing PTC colleges and the admission process shall be completed every year as per the Schedule indicated in this judgment, subject to any variations which may be made upon consensus being reached by the above authorities or subject to any statutory regulations which may be framed in this behalf by the competent authority.

(M.S.Shah,J)

(Sharad D.Dave,J)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1571 of 2005
In
SPECIAL CIVIL APPLICATION No. 22148 of 2005
With
LETTERS PATENT APPEAL No. 1572 of 2005
In
SPECIAL CIVIL APPLICATION No. 22150 of 2005
With
CIVIL APPLICATION No. 11453 of 2005
In
LETTERS PATENT APPEAL No. 1571 of 2005
With
CIVIL APPLICATION No. 11454 of 2005
In
LETTERS PATENT APPEAL No. 1572 of 2005
with
LETTERS PATENT APPEAL No. 1568 of 2005
with
CIVIL APPLICATION No. 11442 of 2005

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SHARDABEN KANTILAL PATEL P.T.C. COLLEGE - Appellant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Appellant(s) : 1,
MR AJ DESAI, AGP for Respondent(s) : 1 - 3.
None for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/11/2005
OPERATIVE ORDER

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

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(M.S.Shah,J)

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